
**Before the
Federal Communications Commission
Washington, D.C., 20554**

In the Matter of)	
)	
Service Rules for the 698-746, 747-762)	WT Docket No. 06-150
and 777-792 MHz Bands)	
)	
Implementing a Nationwide,)	PS Docket No. 06-229
Broadband, Interoperable Public)	
Safety Network in the 700 MHz)	
Band)	

COMMENTS OF TELECOMMUNITY

EXECUTIVE SUMMARY

TeleCommUnity is an alliance of local governments, and their associations, which seeks to refocus attention in Washington on the principles of federalism and comity for local government interests in telecommunications. We file in this proceeding for the following reasons:

- We acknowledge and commend the Commission for the improvements in the Commission's vision for achieving an interoperable, national public service broadband network. The Third Further Notice of Proposed Rulemaking represents a marked improvement to the program outlined in the Second Further Notice of Proposed Rulemaking;

- We seek clarification of the definition of eligible users. TeleCommUnity asks the Commission to preserve the greatest possible discretion at the local level so that local officials may determine eligible users of the network;
- We question the use of an auction to establish the technology platform and license size for the network. Public safety should be the loadstar for the Commission's action, not dollars and cents. TeleCommUnity believes that the Commission should adopt a regional approach to licenses and engage experts to determine whether WiMAX or LTE¹ best meets public safety needs; and
- We encourage the Commission to examine proposals to permit direct allocation of spectrum to communities that agree to build out a system that meets national interoperable standards and meets or exceeds the timeframes outlined in the proposal for coverage service level commitments.

¹ In addition, since we have seen filings which we are led to believe will be filed by a number of local communities that will prefer LTE, we believe the Commission should make this determination with a rebuttable presumption in favor of LTE.

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COMMENTS OF TELECOMMUNITY

I. INTRODUCTION

TeleCommUnity is an alliance of local governments and their associations which is attempting to refocus attention in Washington on the principles of federalism and comity for local government interests in telecommunications. We file these comments to provide preliminary answers to the numerous questions posed by the Federal Communications Commission (“Commission” or “FCC”) in its Third Further Notice of Proposed Rulemaking.² The 700 MHz broadband public safety network model the Commission seeks to create is important to local governments for at least three reasons:

²*In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al*, Third Further Notice of Proposed Rulemaking, WT Docket No. 06-150, PS Docket No. 06-229, released September 25, 2008 (“3FNPRM”)

1. It has the potential to assist communities meet their emergency communications and response needs;
2. It can be truly beneficial to the nation if it results in the participation of the largest number of public entities; and
3. The plan has the potential to lead to economies of scale and innovation that have heretofore been lacking in public safety communication, as communities have for the most part gone it alone in their purchases and system deployments.

TeleCommUnity files these comments for the following reasons:

- We acknowledge and commend the Commission for the improvements in the Commission's vision for achieving an interoperable, national public service broadband network. The 3FNPRM represents a marked improvement to the program outlined in the Second Further Notice of Proposed Rulemaking³;
- We seek clarification of the definition of eligible users. While the Commission seeks a broad definition in its proposal, TeleCommUnity asks the Commission to preserve the greatest possible discretion at the local level so that local officials may determine eligible users of the network;
- We question the use of an auction to establish the technology platform and license size for the network. Public Safety should be the loadstar for the Commission's action, not dollars and cents. TeleCommUnity believes that the Commission

³ *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al*, Second Further Notice of Proposed Rulemaking, WT Docket No. 06-150, PS Docket No. 06-229, released May 14, 2008 ("2FNPRM")

should adopt a regional approach to licenses and engage experts to determine whether WiMAX or LTE⁴ best meets public safety needs; and

- We encourage the Commission to examine proposals to permit direct allocation of spectrum to communities that agree to build out a system that meets national interoperable standards and meets or exceeds coverage service level commitments.⁵

II. **BACKGROUND**

In its *Second Report and Order*, the FCC adopted rules for the establishment of a mandatory public/private partnership (“the 700 MHz Public/Private Partnership”) in the upper portions of the 698-806 MHz band.⁶ The Commission sought to promote the rapid construction and deployment of a nationwide, interoperable broadband public safety network that would serve public safety and homeland security needs.⁷ Despite the overall success of the rest of the auction, whose nearly \$20 million in total bids was twice what many had predicted, the bidding for the D Block license in Auction 73 did not meet the Commission’s reserve price of \$1.33

⁴ In addition, we have learned that a number of local communities will inform the Commission that they prefer LTE. In light of this, the Commission should make its selection with a rebuttable presumption in favor of LTE.

⁵ See generally, Opening Comments of the New York Police Department (NYPD), San Francisco, King County, Philadelphia, District of Columbia, as well as the Reply Comments of NYPD in the 2FNPRM

⁶ See *In re Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, et al, Second Report and Order, 22 FCC Rcd. 15289 (2007) (“*Second Report and Order*”) recon. pending.

⁷ *Id.*

billion.⁸ Still, the auction's success has allowed the agency to "de-link" the D Block so that the successful bids for the rest of the spectrum could be processed for licensing and the Commission commendably chose not to re-offer the D Block license immediately in order to "provide additional time to consider options with respect to the D Block spectrum."⁹

TeleCommUnity filed comments in response to the 2FNPRM, many of which were cited by the Commission in its 3FNPRM released on September 25, 2008. However, we note that the 3FNPRM was released over the objection of Democratic Commissioners Jonathan S. Adelstein and Michael J. Copps.¹⁰ We share the primary objections voiced by Commissioners Adelstein and Copps. The FCC never obtained outside expertise to make the technical and economic assumptions that are included in the item and which must be established before the Commission moves forward with its proposal. For instance, one of TeleCommUnity's primary objections to the otherwise positive work of the Commission in the 3FNPRM is the Commission's reliance upon the marketplace to resolve two of the largest issues facing the nation: whether to award the

⁸ Recognizing the uncertainties facing D Block bidders, the *Second Report and Order* instructed the FCC staff to set a "reserve price" (minimum bid) that would be somewhat discounted by comparison with other upper band spectrum to be auctioned. Nevertheless, the D Block drew only one bid of about \$475 million, only a third of the required minimum. See http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=73.

⁹ Auction of the D Block License in the 758-763 and 788-793 MHz Bands, AU Docket No. 07-157, *Order*, FCC 08-91, ¶ 3 (rel. Mar. 20, 2008) (*D Block Post-Auction Order*). In the *Second Report and Order*, the Commission decided that, if the reserve price for the D Block was not satisfied in the initial auction results, the Commission might either re-offer the license on the same terms in an immediate second auction, or re-evaluate the license conditions. See *Second Report and Order*, 22 FCC Rcd. at 15404 ¶ 314. See also *Order*, FCC 08-91, released March 20, 2008 ("De-Link Order").

¹⁰ Comm. Adelstein concurred in part with the item and dissented in part while Commissioner Copps limited his support to merely concurring.

D-Block license on a national or regional basis,¹¹ and what broadband technology platform should be employed for the D-Block: WIMAX or Long Term Evolution (LTE).

III. GUIDING PRINCIPLES FOR ACTION

In its comments to the 2FNPRM, TeleCommUnity shared with the Commission a series of guiding principles for any future actions concerning the D-Block.¹² We believe these principles warrant repeating.

- Improved, interoperable regional and even national capabilities are of critical importance. As federal, state, and local elected officials and the public safety community have come to understand the potential of a ubiquitous wireless broadband network developed through the marriage of readily available technologies such as 3G cellular, Wi-Fi and Wi-Max with niche allocations of spectrum for Intelligent Transportation Systems (“ITS”) at 5.9 GHz¹³ and emergency incident management at 4.9 GHz, such a network has moved from being a want to a need.¹⁴
- The Commission was right to explore the public/private partnership proposal outlined in the *Second Report and Order* as a means to promote the rapid construction and deployment of a nationwide, interoperable broadband public safety network that would serve public safety and homeland security needs. The Commission should not,

¹¹ The suggestion of New York and others that the spectrum is given directly to local governments did not garner much in the way of FCC consideration.

¹² TeleCommUnity Comments at 3. Guiding principles are not repeated where the Commission has adopted the suggested position in the 3FNPRM.

¹³ 47 C.F.R. § 90.350 *et seq.*, and 47 C.F.R. § 95.1501 *et seq.*

¹⁴ 47 C.F.R. § 90.1201 *et seq.*

however, be so wedded to the public/private partnership that it does not create an avenue for local governments willing to assume the obligations of a winning bidder to obtain a direct allocation of the spectrum. Such spectrum was after all set aside for public safety purposes.

- The Commission should continue to act prudently in not rushing to judgment on how best to achieve a ubiquitous wireless broadband network for public safety. Further, the Commission has been willing to consider proposals that differ from those outlined in the *Second Report and Order*. It must continue to do so.
- The need for a ubiquitous wireless broadband network for public safety is acute, but this acute need will not be met if the Commission is bullied by commercial interests, who seek to accelerate the availability of the D-Block for purely commercial purposes.
- Any subsequent order must make clear that all local government uses of the spectrum are permitted and in pursuit of public safety.
- Should the Commission find at the end of this process that there are not sufficient market incentives to craft a viable business model for a public/private partnership to deploy a ubiquitous wireless broadband network for public safety; the Commission must act to preserve the broadest array of options to capture resources to build such a network. Such action may include a recommendation to Congress to provide the necessary appropriation or to empower the Commission to auction the D-Block and earmark the proceeds for the construction of such a network.

IV. **THE COMMISSION HAS MADE NUMEROUS IMPROVEMENTS IN THE PROPOSAL OUTLINED IN THE THIRD FURTHER NOTICE OF PROPOSED RULEMAKING.**

The 3FNPRM endorses a number of suggestions TeleCommUnity and others made in response to the 2FNPRM. While not an exhaustive list of improvements, we pause to acknowledge a number of the improvements in the 3FNPRM and urge the Commission not to alter these conclusions in any future action. Among these improvements are:

A. Use of the Network will not be mandatory by local public safety entities.

In ¶ 2¹⁵ of the 2FNPRM, the FCC asked “whether [public safety entities] should be required to subscribe to the network.” TeleCommUnity and others strongly opposed any mandatory use rules. The FCC in the 3FNPRM at ¶ 338 agrees that use of the network by public safety entities will not be mandatory.

B. The Public Safety Broadband Licensee must be a non-profit organization.

In ¶ 2¹⁶ of the 2FNPRM, the FCC asked whether it should clarify that the “Public Safety Broadband Licensee be a non-profit organization...?” TeleCommUnity and others strongly supported this suggestion. We are pleased that the Commission establishes a non-profit mandate in the 3FNPRM at ¶ 11.

C. The auction should preserve the option of offering licenses on regional basis.

In ¶ 3 of the 2FNPRM, the FCC asked for comment on “... whether to license the D Block and public safety broadband spectrum on a nationwide or adopt a regional geographic service area basis...” TeleCommUnity and others strongly supported an examination of the

¹⁵ See also ¶¶ 37, 38.

potential benefits of a regional distribution of licenses. This suggestion is incorporated in the 3FNPRM at ¶ 4.¹⁷

D. Narrowband relocation issues are identified and addressed

The 2FNPRM recognized that not only are there existing public safety narrowband users of the spectrum being assigned to the D-Block that must be relocated, but that the deadlines for completing such relocation cannot be achieved until there are resources to pay for such an action – and that all such resources will only be forthcoming if there is a license awarded. The 2FNPRM also recognized that the resources reserved for these moves were insufficient for the task at hand. For these and other reasons, TeleCommUnity and others requested that the Commission extend the relocation deadline and dedicate additional resources for the task. These suggestions are incorporated in the 3FNPRM.¹⁸

V. THE FCC SHOULD BE CAUTIOUS SO AS NOT TO LIMIT THE ABILITY OF ALL LOCAL GOVERNMENT DEPARTMENTS TO USE THE SERVICES OF THE PUBLIC SAFETY NETWORK.

In the 2FNPRM, the Commission asked whether “under Section 337 of the Communications Act of 1934 . . . and Section 90.523 of the Commission’s rules, only entities that are providing public safety services, as defined in the Act, are eligible to use the public safety spectrum portion of the shared network established under the 700 MHz Public/Private

¹⁶ See also ¶¶ 39-45.

¹⁷ TeleCommUnity is cited in the order for the concept that some local governments wanted a regional approach to be considered. TeleCommUnity support was also referenced by Commission Tate in her statement accompanying release of the 3FNPRM.

¹⁸ See ¶ 14 (extending the current February 17, 2009 deadline for completing such relocation to twelve months from the date upon which narrowband relocation funding is made available by the D Block licensee(s); and increasing the current \$10 million cap on narrowband relocation costs to \$27 million).

Partnership.” 2FNPRM, ¶ 2 (footnotes omitted).¹⁹ In the 3FNPRM, the Commission redefines, modifies, and clarifies those entities that will be eligible to use the Shared Wireless Broadband Network. (¶¶ 322-331.) While Section 337 limits the use of the spectrum to public safety services, Congress was most expansive in its definition of what constitutes such a service. Section 337 (f)(1)(A) permits any governmental use which has the “sole or principal purpose . . . to protect the safety of life, health, or property.”²⁰ The Communications Act and FCC rules allow governmental and approved non-governmental uses of public safety spectrum beyond the immediate demands of responding to and resolving emergencies. The Commission made this abundantly clear in the legal analysis portions of its *Second Report and Order* where it defended the shared use of public safety spectrum by commercial entities.²¹

Many local governments have been using public safety spectrum in this broader sense for years, and other governments are familiarizing themselves with the eligibility rules. The FCC must be careful not to assume that only uniformed personnel are involved with the mission of preserving the safety of life, health, or property. For example, in many communities, those missions are run by non-uniformed personnel in public works and health departments.

In the 3FNPRM, the Commission cites examples of eligible users. TeleCommUnity fears that some may read these examples (hospitals and critical infrastructure entities) as limiting the scope of eligibility. At the local level, entities such as transit agencies, ports, are special districts are often integral players in regional responses and must have access to the network.

¹⁹ See also ¶¶ 21, 30-34.

²⁰ 47 U.S.C. § 337. Subsection (f) (1) (B) (ii) also provides that non governmental organizations (think volunteer fire department) may use the spectrum with the government’s approval while Subsection (f) (1) (C) bans the services from being “made commercially available to the public by the provider.”

Furthermore, local agencies have already devoted significant resources to interoperability and coordination. By preserving local authority to make such eligibility decisions, the Commission is able to build upon years of experience and work product facilitating real-time decisions regarding: who needs access to the network; what information they are entitled to access, and the means to deliver that information. TeleCommUnity believes that the closer the decision-making loop is on access, the faster such decisions may be made and the more successful the network will be.

VI. **THE COMMISSION SHOULD ESTABLISH REGIONAL LICENSES.**

TeleCommUnity agrees with the 3FNPRM's decision to establish rules that will ensure that a single broadband air interface is used nationwide regardless of whether there is a single licensee or multiple regional licensees. 3FNPRM at ¶3. TeleCommUnity further agrees that such a standard will result in the ability of public safety users to communicate when they roam outside their home regions. *Id.* We can all appreciate that were the Commission not to impose such a national standard, the first crisis to arise after the deployment of the network, be it natural or manmade, would fall exactly between two such regions.

However, TeleCommUnity believes that one of the greatest weaknesses of the 3FNPRM is its refusal to choose the appropriate geographic license area for the D Block. The Commission looks to the marketplace to make that important decision. *Id.* at ¶ 3. The primary benefit of a national license is that it would result in a single broadband air interface standard. Since the Commission has mandated that all licensees will build to such a standard, and that use of the network will be voluntary, it is no longer clear that there are additional benefits to a national license. There are, however, limitations.

²¹ 47 U.S.C. § 337(f) (1); 47 C.F.R. § 90.523; *Second Report and Order* at ¶¶ 412-431.

The greatest limitations posed by a national license are that a national license does not permit a direct allocation of D-Block spectrum to local governments, which TeleCommUnity believes must be a consideration in the auction. For absent the possibility of such direct allocations, many of these local governments may choose to refuse to participate in the national network. Since many of these are major metropolitan areas that might otherwise be the leading contenders based on risk criteria for Federal-local public safety partnerships, the D-Block may never achieve its fullest potential.

A regional approach, on the other hand, would not prejudice any bidder that seeks a national footprint. It would simply require the filing of a bid in each of the regional auctions. Given the choice between forcing a bidder to work a little harder on paper and preserving the widest flexibility, including the potential for direct allocations, TeleCommUnity believes the latter is the safer course.

VII. **THE COMMISSION SHOULD RETAIN EXPERTS TO DETERMINE THE BEST TECHNOLOGY PLATFORM FOR PUBLIC SAFETY.**

TeleCommUnity disagrees with the Commission's plan to look to the marketplace to determine the common broadband technology platform to deliver the D-Block service.

3FNPRM at ¶ 3. While there are times that a bid price is the most effective means to establish the best and most productive use of a public asset, this is not such a time. Congress has already established that the asset is to be used to create a nationwide public safety broadband interoperable network. The Commission should therefore retain the experts it needs to determine the best broadband platform for public safety and alert bidders that they will have to employ that platform to craft their commercial services. In addition, since a number of local communities

are in the process of building their own networks employing LTE,²² we urge the Commission to make its determination with a rebuttable presumption in favor of LTE.

VIII. THE COMMISSION SHOULD ADDRESS THE REQUESTS OF AN INCREASING NUMBER OF LOCAL GOVERNMENTS FOR A DIRECT ALLOCATION OF D-BLOCK SPECTRUM.

TeleCommUnity would encourage the Commission to examine proposals to permit direct allocation of spectrum to communities that agree to build out system to meet national interoperable standards and meet or exceed coverage service level commitments.

Since the Commission has agreed use of the network is voluntary, allowing individual communities to obtain a direct allocation will not prejudice what private enterprise will be willing to bid for other regional licenses where local government does not seek a direct allocation.

We fear that if the Commission refuses to integrate a direct allocation procedure, many public safety users simply will not participate in the network, if and when it is ever completed. We therefore join with others in urging the Commission to continue to meet with local and regional agencies to discuss their unique needs and the potential resources they might contribute to a nationwide public safety broadband network. By working directly with both large and small local agencies, the Commission will obtain valuable information that will help the Commission develop a realistic, workable plan for a nationwide public safety broadband network.

TeleCommUnity is aware of the Commission's goal of extending the public safety broadband network to rural and low-density parts of the nation, but we fear the current proposal

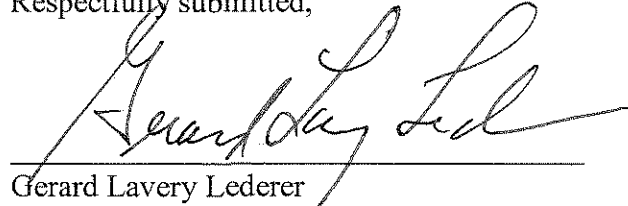
²² We have been informed that local communities will be filing such information in this proceeding.

may result in numerous urban areas opting out of the nationwide network. If the Commission continues to examine means to insert flexibility into the program to better serve all areas, we believe the Commission can develop a model that will meet the needs of all communities.

IX. **CONCLUSION**

For the reasons indicated above, the Commission should continue on its path of seeking a public/private partnership for a 700 MHz broadband public safety network plan, but not be so married to the idea as not to consider alternative plans outlined in this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerard Lavery Lederer", written over a horizontal line.

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